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EMINENT DOMAIN — WHEN IS PROPERTY TAKEN — GRADE OF STREET CHANGED BY RAILROAD. — In raising the grade of its roadbed, the defendant railroad company was required by a city ordinance to make the necessary alterations in the grade of streets crossed by the railroad, as directed by the city engineer. The grade of the street in front of the plaintiff's property was raised. *Held*, that she is entitled to compensation for damage to her right of access. *Pittsburg, C., C. & St. L. Ry. Co. v. Atkinson*, 97 N. E. 353 (Ind., App. Ct.).

The alteration of street grades for street purposes gives abutters no claim to compensation. *Callender v. Marsh*, 1 Pick. (Mass.) 418. See 1 LEWIS, EMINENT DOMAIN, 3 ed., §§ 133, 134, 137. It is otherwise if the street is modified to serve as a dike or furnish materials for another street. *City of Shawmeatown v. Mason*, 82 Ill. 337; *Mayor, etc. of Macon v. Hill*, 58 Ga. 595. Raising an approach for an ordinary bridge is a street purpose. *Willis v. Winona City*, 59 Minn. 27, 60 N. W. 814; *Willets Mfg. Co. v. Board of Chosen Freeholders*, 62 N. J. L. 95, 40 Atl. 782. Elevating one for private accommodation is not. *Ranson v. City of Sault Ste. Marie*, 143 Mich. 661, 107 N. W. 439. But a street purpose does not cease to be such because a corporation is required to execute it. *Chicago, etc. Ry. Co. v. Johnson*, 45 Ind. App. 162, 90 N. E. 507; *Conklin v. New York, etc. Ry. Co.*, 102 N. Y. 107, 6 N. E. 663. Accordingly, many courts deny damages for changes in grade through the construction of a railroad crossing. *Rauenstein v. New York, etc. Ry. Co.*, 136 N. Y. 528, 32 N. E. 1047; *Atchison, etc. R. Co. v. Arnold*, 52 Kan. 729, 35 Pac. 780. Certainly there is no less a street after the change. *City of New Haven v. New York & New Haven R. Co.*, 39 Conn. 128; *Louisville Steam Forge Co. v. Mehler*, 112 Ky. 438, 64 S. W. 652. Yet, since the necessity is for the accommodation of a distinct line of travel, not for any additional utility in the street itself, the better opinion and the probable weight of authority support the principal case. *Buchner v. Chicago, etc. Ry. Co.*, 56 Wis. 403, 60 Wis. 264, 14 N. W. 273, 19 N. W. 56; *Perrine v. Pennsylvania R. Co.*, 72 N. J. L. 398, 61 Atl. 87. The doctrine extends to all subsequent improvements necessary to preserve the utility of a preëxisting street. *Burrill v. City of New Haven*, 42 Conn. 174. In the construction of a new street, however, a crossing would seem to be a necessary part. *Cf. Northern Central Ry. Co. v. Mayor, etc. of Baltimore*, 46 Md. 425; *City of Chester v. Philadelphia, etc. R. Co.*, 3 Walk. (Pa.) 368. If so, its subsequent alteration apparently involves no new burden on adjoining land. *Contra, Egbert v. Lake Shore, etc. Ry. Co.*, 6 Ind. App. 350, 33 N. E. 659.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — ACCOUNTABILITY FOR ACQUISITIONS FROM LEGATEE. — Before legacies were payable, after a legatee had given him a power of attorney to pledge or assign her legacy of \$2381.25 for \$2000, the executor advanced that sum to her from his own money. When he discharged the legacy she returned the balance in recognition of the accommodation. *Held*, that the executor is liable to account to the estate for the balance, minus legal interest on the amount loaned. *Matter of De Vany*, 147 N. Y. App. Div. 494, 132 N. Y. Supp. 582.

Like other fiduciaries, an executor is not allowed to transfer to himself any interest in the estate. *Michoud v. Girod*, 4 How. (U. S.) 503. Such transactions, however, are not void, but voidable by the beneficiaries. *Den d. Hance v. McKnight*, 11 N. J. L. 385; *Remick v. Butterfield*, 31 N. H. 70. A purchase directly from an individual beneficiary cannot be avoided if the executor sustains the burden of proving the transaction equitable. *State ex rel. Jones v. Jones*, 131 Mo. 194, 33 S. W. 23. *Cf. Brown v. Cowell*, 116 Mass. 461. See 1 PERRY, TRUSTS AND TRUSTEES, 6 ed., § 205. In any event, the other beneficiaries cannot avoid it. See *Clark v. Jacobs*, 56 How. Pr. (N. Y.) 519, 522. But cases confuse this with the question whether they can hold the executor